SINGAPORE REPORTS.

CHO SEK YUK AND OTHERS v. REX.

[App. Crim. Juris. (Brown, J.) February 28, 1947]

Merchant Shipping Ordinance, Section 126 (6)—Refusing to obey lawful command of master—Charge should contain particulars of what the lawful command was—Criminal Procedure.

In this case the accused were charged that at or about 1730 and 1811 hours on the 30th December 1946 they refused to obey the lawful command of the Master of their ship. The charge did not state what the lawful command was.

Held, that the charge should have contained particulars of what the lawful command was, but as in this case the omission to do so has occasioned no failure of justice, the conviction must be upheld.

Case referred to:—

(1) *Rajabuddin Mondal v. Rex* (1933) A.I.R. Cal. 676.

APPEAL from the Magistrate, Marine Court.

R. C. H. Lim for the appellants.

A. W. Bellamy for the respondents.

Brown, J.—The first ground of appeal is that the charge did not contain such particulars as are reasonably sufficient to give the accused notice of the matter with which they are charged. They are charged that on or about 17.30 and 18.11 hours on the 30th December 1946 they refused to obey the lawful command of the Master. What the lawful command was is not stated. I am of the opinion that the charge should have contained particulars of what the lawful command was which they were charged with refusing to obey. But the omission to give such particulars is no ground for setting aside the conviction if such omission has occasioned no failure of justice, *Rajabuddin Mondal v. Rex*[1].

Mr. Lim who appeared in the Court below, agreed that he could have asked for an adjournment. But he said that he did not do so because he did not consider that he was prejudiced. Nevertheless he contended that the failure to give particulars had occasioned a miscarriage of justice by reason of the fact that owing to this failure he did not sufficiently cross-examine the prosecution witnesses with regard to the "stand-by" order. But it was in cross-examination of the Master (who was the first witness for the prosecution) by Mr. Lim himself that Exhibit B—the log entry of the disobedience of orders—was elicited. Thus it was while Mr. Lim was still cross-examining the first prosecution witness that the alleged breach of orders must have come to his notice, and there was nothing to stop him from cross-examining the first and every other witness for the prosecution, with or without an adjournment, upon the breach of orders referred to in Ex. B. Further the appellant Lee Cheng Soi stated in his examination in chief: "I know I am charged with refusing to obey the order of the Master on 30.12.46. I was not given the order to 'stand-by' about 5.30 p.m. or 6 p.m. on 30.12.46." Although I am of the opinion that the charge ought to have contained particulars of the lawful command which the appellants were charged with disobeying, having regard to the matters above referred to I cannot see that any failure of justice was occasioned by the omission.

Mr. Lim then argued that as the Master, when giving his order to the men at 5.30 p.m., had stated that the "stand-by" signal would be at 6 p.m. no blame can attach to the appellants when the "stand-by" signal went at eleven minutes past six and they failed to obey it. I am quite unable to agree with his contention on this point. At 5.30 p.m. the Master informed the appellants that the ship was sailing and that when he rang "stand-by" they must stand-by fore and aft to sail the ship. Obviously he had to name a time. No less obviously it is impossible to guarantee that the signal shall be given on the stroke of the time named. And it would be strange if men who are told to be ready for "stand-by" at 6 p.m. were entitled to ignore the "stand-by" signal because it was given at 11 minutes after 6. I cannot think what the eff · might be if Mr. Lim's argument on this point were to prevail.

Then it was said that there was no evidence to show that the men heard the signal. My first comment on that is that even if it were correct, having been warned to 'stand-by' it was their business to be in a position to obey the order when it was given. But there is evidence that the men heard the signal. There is the evidence of the Master who said "the telegraph would be heard all over the ship." It would be surprising to me if it were not so.

Now upon the question of sentence the learned Magistrate imposed a sentence of 2 months R.I. on the 1st accused and 6 weeks R.I. on the others. And it would appear that under section 126 (b) of the Merchant Shipping Ordinance the maximum sentence is four weeks imprisonment, and also, at the discretion of the Court, the forfeiture of two days' pay. It seems that a sentence of a fine only cannot be imposed. I am in entire agreement with the learned Magistrate in differentiating between the appellant Cho Sek Yuk and the others. Cho Sek Yuk was throughout the ring-leader of this trouble, and it was Cho Sek Yuk who

uttered what can only be considered a threat when he made the insubordinate remark to the Master on being told to stand-by, after the signal had been ignored.

In the case of Cho Sek Yuk, for the sentence of 2 months R.I. I substitute the maximum sentence of imprisonment for 4 weeks. In the case of the other appellants, for the sentence of 6 weeks R.I. I substitute a sentence of 12 days' imprisonment, sentence to run from to-day's date.

In the case of all the appellants, the appeals against conviction are dismissed.

Order Accordingly.

RE A. PENHAS DECEASED.

[Orig. Civil Juris. (Murray-Aynsley, C.J.) Jan. 30, 1947]

Proof of death—presumption of death.

On an ordinary petition for Letters of Administration where the death of the intestate is put in issue, the Court can presume that the death took place on or after a given date.

G. E. N. Oehlers for Plaintiff on issue.

John Laycock for Defendant on issue.

In this case one Tan Soo Eng filed a Petition for Letters of Administration of the Estate of Abraham Penhas. A Caveat was filed by Isaac Penhas, a brother of the said Abraham Penhas, and later an Order was made for the trial of the following issues namely "whether the abovenamed Abraham Penhas who resided in Singapore is dead and if so when he died." Tan Soo Eng was the Plaintiff on the said issues and Isaac Penhas was the Defendant on the said issues.

It was admitted by the Defendant that Abraham Penhas was arrested by the Japanese on the 3rd March 1942 and that he was imprisoned by the Japanese and also that subsequent to some date about the 10th March 1942 no communication had ever been received from him by his relatives.

The Plaintiff called her mother Sim Peng Neo as a witness. This witness gave evidence to the effect that following information received she had gone to the Detective Police Station, Robinson Road, Singapore, on the 17th day of the 1st Chinese Moon in the year 1942, that is the 3rd March 1942, and that she had then seen Abraham Penhas there. Following further information she again went to the Detective Police Station, Robinson Road, on the 22nd day of the 1st Chinese Moon, that is the 8th March 1942 when she saw and recognised his dead body. This evidence was uncorroborated.

The Defendant produced two wholly independent witnesses who testified that they shared a prison cell with Abraham Penhas at the Sailors Home, Anson Road (not the Detective Police Station) from the 5th to the 10th March 1942.

Murray-Aynsley, C. J.:—Delivering an Oral Judgment said that it was almost inconceivable that if Abraham Penhas was still alive he would not have communicated with his friends and relatives before that time. He held that Abraham Penhas had died on or since the 10th March, 1942.

Order Accordingly.

MALAYAN UNION REPORTS.

PUBLIC PROSECUTOR v. ENG LIM AND TEN OTHERS.

[Criminal Revision (Laville, J.) December 14, 1946]

Common Gaming House Enactment, Section 6, 16 and 17—When presumption under Section 16 will arise—Where no presumption arises the prosecution must show aliunde that place is a common gaming house —Presumption under Section 6 (ii) of the Enactment—Revision—Criminal Procedure Code Chapter XXXI.

In this case eight of the accused were convicted of the offence of gaming in a common gaming house and fined $25/- each. They applied to the Supreme Court for revision under Chapter XXXI of the Criminal Procedure Code. The prosecution claimed that as they had entered the house under the provisions of Section 16 of the Common Gaming House Enactment and had found there instruments for gaming the presumption arose under Section 17 of the Enactment that the room was a common gaming house, and the presumption also arose that the occupants were gaming. The officer-in-charge Police District who was in charge of the raiding party in this case stated in his evidence that he was a Senior Police Officer but he did not give evidence as to his rank or as to his being gazetted as a Senior Police Officer under the Common Gaming House Enactment. There was further evidence that the officer-in-charge Police District acted on information received but there was no evidence that such information was on oath and in writing, nor was there any evidence given that it was his personally acquired knowledge of facts and circumstances that satisfied him that there were sufficient grounds for a search or what these facts or circumstances were, or that the time factor was one to be considered, so as to justify him in entry under Section 16. The prosecution evidence was that on entry the Police found the accused gambling at Pai Kau; the room was furnished only with a table and chairs round which the accused were grouped and on the table was Pai Kau, dice, other implements and 180 counters; near the table were seated one of the accused with a further supply of counters and some money.

Held, (1) that the entry in this case did not comply with the provisions of Section 16 of the Common Gaming House Enactment and therefore no presumption under Section 16 of the Enactment could arise therefrom;